

**NEW MEXICO ADULT GUARDIANSHIP STUDY COMMISSION  
INITIAL STATUS REPORT**

**INITIAL RECOMMENDATIONS  
AND ISSUES FOR FURTHER STUDY**

The New Mexico Adult Guardianship Study Commission has submitted its initial status report to the Supreme Court. The report includes a set of initial recommendations and issues for further study that have been identified by the Commission for improving the guardianship system in New Mexico. As the report demonstrates, meaningful reform of the guardianship system will not be easy or inexpensive and cannot be achieved by a single branch of government acting alone. Rather, true change will require the legislature, the executive, and the judiciary to work together in their respective roles to enact the laws, allocate the resources, and implement the changes that are necessary to improve the guardianship system. The Commission therefore offers its initial status report for consideration, not only to the Supreme Court, but to all who are interested in improving the guardianship system.

If you would like to comment on the initial recommendations and issues for further study set forth below before the Commission submits its final report to the Supreme Court, you may do so by submitting a comment either electronically through the Commission's web site at <https://supremecourt.nmcourts.gov/new-mexico-adult-guardianship-study-commission.aspx> or in writing by mail, email, or fax to:

Joey D. Moya, Clerk  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 87504-0848  
[nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov)  
505-827-4837 (fax)

Your comments must be received by the Clerk on or before November 8, 2017, to be considered by the Commission. Please note that any submitted comments may be posted on the Commission's web site for public viewing.

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**Initial recommendations:**

- A. Require certification by statute or court rule of professional guardians and conservators by a national organization, such as the Center for Guardianship Certification. This recommendation is not intended to preclude New Mexico from developing its own certification requirements.

- B. Require bonding or an alternative asset-protection arrangement by statute or court rule for conservators to protect the interests of the individual subject to the conservatorship.
- C. Propose legislation to establish and fund an adult protected person oversight board to regulate certified, bonded, professional guardians and conservators and to communicate concerns about professional guardians and conservators to the courts.
- D. Seek legislative funding for appropriate personnel, including but not limited to monitors and auditors, to investigate information contained in annual reports and audits of guardians and conservators, and to report to the court.
- E. Establish stringent reporting and financial accountability measures for conservators, including the following:
  - 1. require conservators, upon appointment, to sign releases permitting the courts to obtain financial documents of protected persons;
  - 2. require annual reports to include bank and financial statements and any other documentation requested by the court auditor, with appropriate protections to prevent disclosure of confidential information;
  - 3. require conservators to maintain a separate trust account for each protected person to avoid commingling of funds; and
  - 4. require conservators to maintain financial records for seven years.
- F. Require regular training for all current and future judges about the law that applies in guardianship and conservatorship proceedings.
- G. Create a flowchart and glossary of terms for the guardianship/conservatorship process.
- H. Create educational and training resources for non-lawyers involved in a guardianship or conservatorship proceeding.
- I. Require mediation or facilitated family meetings in all contested guardianship and conservatorship proceedings.
- J. Require by court rule that a judge make specific findings of fact when appointing a guardian or conservator if the judge deviates from the protected person's advance directive, trust, will, or estate plan or the order of priority listed in the statute.
- K. Create and mandate the use of a coversheet in adult guardianship and conservatorship proceedings.
- L. Authorize and seek funding for the Administrative Office of the Courts to hire special masters or commissioners to hear grievances against guardians and conservators.

- M. Seek legislative funding for technology and necessary staffing to modernize accounting and tracking of conservatorships and to build safeguards to protect vulnerable adults from financial exploitation.
- N. Establish a recurring, diverse commission, which would be appointed every four years to hold public hearings about the guardianship and conservatorship statutes, rules, and procedures in New Mexico and to make recommendations for continued improvement of the guardianship system.
- O. Establish an Adult Guardianship and Conservatorship Rules Committee.
- P. Establish an Adult Guardianship and Conservatorship Forms Committee that includes members who are not lawyers.
- Q. Authorize the Commission Chair to seek a formal ethics advisory opinion regarding potential ethical issues that have come to the attention of the Commission.

**Issues for further study:**

1. Whether to support the enactment of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.
2. Whether to recommend changes to the statutes and court rules that govern sequestration of court hearings and confidentiality of court records in guardianship and conservatorship proceedings.
3. Whether to recommend changes to the procedures for seeking or appointing a temporary guardian or conservator in an emergency, ex parte proceeding.
4. Whether to recommend changes to the statutes that govern the order of priority for the appointment of a guardian or conservator.
5. Whether to recommend the creation of a “limited conservator” whose authority is limited to accessing financial information to enable informed decision-making about the alleged incapacitated person’s placement pending the appointment of a guardian or conservator.
6. Whether to recommend appointing guardians *ad litem* and court-appointed visitors on a rotating basis, rather than on the recommendation of a petitioning attorney.
7. Whether to recommend auditing and reporting requirements for conservators like those applicable to charitable organizations under the Charitable Solicitations Act, NMSA 1978, §§ 57-22-1 to -11.

*Note: For a full explanation of the Commission’s initial recommendations and issues for further study, please see the initial status report, dated October 1, 2017, which is available on the*

*Commission's web site at [https://supremecourt.nmcourts.gov/uploads/files/AGSC%20Initial%20Status%20Report\\_FINAL.pdf](https://supremecourt.nmcourts.gov/uploads/files/AGSC%20Initial%20Status%20Report_FINAL.pdf).*